

a<sup>4</sup>

~~operative fragment or non-human homologue thereof, or an operative derivative of any of these.~~

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#### REMARKS

##### The Pending Claims:

Before entry of the foregoing amendments Claims 1-132 are pending in this application. Claims 1-13, 22-34, 43-53, 63-74, 83-93 are directed to a method of obtaining a selectable transgenic stem cell of a vertebrate. Claims 14-17, 35-38, 54-57, 75-78, 94-97, are drawn to a selectable transgenic stem cell, and Claims 18-19, 39-40, 58-59, 79-80, 98-99 relate to a transgenic non-human vertebrate comprising the stem cell. Claim 60 relates to a maturing male gamete obtained by the method. Claims 20, 41, 61, 81, 100 relate to vertebrate semen comprising a maturing male gamete obtained by the method. Claims 21, 42, 62, 82, and 101 relate to a method of producing a non-human transgenic vertebrate animal line. Claims 102-106 relate to a nucleic acid construct, comprising a cyclin A1 promoter. Claims 107 and 110-114 relate to a transgenic vertebrate cell containing the nucleic acid construct, and Claims 108-109 and 115-117 relate to a transgenic non-human vertebrate comprising the cell. Claims 118-132 are directed to a kit for transfecting a male vertebrates germ cells.

##### Applicant's Amendments to the Claims

Applicant's voluntary amendments to Claim 1 are made for the sake of greater clarity.

Applicant's amendment of Claim 75 is merely to provide Claim 75 with all the limitations of Claim 63, from which it formerly depended and which is now canceled without prejudice as drawn to a non-elected group.

Applicant's amendment of Claim 94 is merely to provide Claim 94 with all the limitations of Claim 83, from which it formerly depended and which is now canceled without prejudice as drawn to a non-elected group.

Applicant's amendment of Claim 107 is merely to provide Claim 107 with all the limitations of Claim 102, from which it formerly depended and which is now canceled without prejudice as drawn to a non-elected group.

The Office Action and Applicant's Response to Restriction Requirement

The Examiner required restriction, under 35 U.S.C. § 121, and required Applicant to elect a single invention to which the claims must be restricted.

The Examiner presented the following three groups:

1. Group I; Claims 1-62, 75-82, 94-101, and 107-117: drawn to a method of obtaining a selectable transgenic stem cell of a vertebrate; a selectable transgenic stem cell and a transgenic non-human vertebrate comprising the stem cell; a maturing male gamete obtained by the method and vertebrate semen comprising the maturing male gamete; a method of producing a non-human transgenic vertebrate animal line; a transgenic vertebrate cell containing an inventive nucleic acid construct, and a transgenic non-human vertebrate comprising the cell.

2. Group II; Claims 63-74 and 83-93: drawn to a method of obtaining a selectable transgenic stem cell of a vertebrate involving in vitro transfection.

3. Group III; Claims 102-106 and 118-132: drawn to a nucleic acid construct, comprising a cyclin A1 promoter; and a kit for transfecting a male vertebrates germ cells.

In response to the restriction requirement, Applicant elects **Group I**.

Applicant requests the Examiner to cancel Claims 63-74, 83-93, 102-106, and 118-132, without prejudice as belonging to non-elected groups.

Applicant's Election of Species

The Examiner required elections of species, under 35 U.S.C. § 121, to which claims shall be restricted if no generic claim is finally held to be allowable. The Examiner stated that currently Claims 1-8, 11-29, 32-49, 52-70, 73-89, 92-115, and 118-132 are generic.

The Examiner presented the following species for election:

1. The claimed methods, wherein the vertebrate is a
  - (a) mammal (e.g., Claims 8, 9, 19, 29, 30, 40, 49, 50, 59, 109, and 116); or
  - (b) bird (e.g., Claims 8, 10, 19, 29, 31, 40, 49, 51, 59, 109, and 117).

Applicant elects:       **(a) mammal.**

2. The source for the polynucleotide is a
  - (a) mammal (e.g., Claim 1, 4, 75, 94, 107); or
  - (b) bird (e.g., Claim 1, 4, 75, 94, 107).

Applicant asserts that claims involving the recitation of a polynucleotide comprising a transcriptional unit of a stem cell-specific promoter operatively linked to a DNA encoding a fluorescent or light-emitting protein, are generic as to the source of the stem cell-specific promoter polynucleotide sequence, therefore the requirement for

election of species as to the source of the promoter DNA is traversed.

However, in accordance with 37 C.F.R. § 1.143, Applicant provisionally elects:

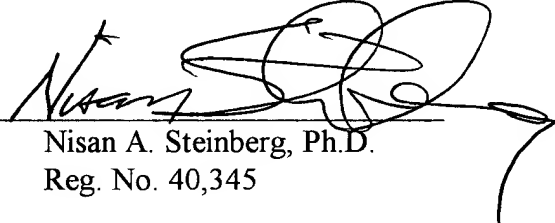
**(a) mammal.**

Applicant's elections of group and species are made with a complete reservation of all rights under 35 U.S.C. § 121.

Respectfully submitted,

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